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09/501,196	02/10/2000	Martin King	QUCA.95091	3525

5251 7590 08/12/2005		EXAMINER
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ART UNIT	PAPER NUMBER
2142	

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _12-15-03_.

2a)☒ This action is **FINAL**.　　2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-12_ is/are pending in the application.

　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-12_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a)☐ All　b)☐ Some * c)☐ None of:

　　　1.☐ Certified copies of the priority documents have been received.

　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
　　Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
　　Paper No(s)/Mail Date _____.
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

DETAILED ACTION

1.   Applicant's amendment filed on 12/15/03 has been entered and made of record.

2.   In response to Applicant's amendment filed on 12/15/03 the rejection of claims 2-7,9,11-18, 20, 22-23 under 112, first paragraph is withdrawn.

3.   Applicant's arguments filed 12/15/03 have been fully considered but they are not persuasive with regard to claims 1-2, 6, 8, 13, 17 and 19 for the following reasons:

Applicant alleges, "Independent claim 1, as amended, is [,]" (page 11, line 19- page 12, line 22). The Examiner disagrees. Firstly, Stumm teaches a sending device (server) that forwards the electronic document directly to the receiving device because the user (receiving device) downloads the document directly, from the server, i.e., the server sends the document directly to the user. Secondly, the claim language of claim 1 does preclude an intermediary server from sending a document directly to a user. Thirdly, the claim neither specifies who is sending the document directly to the user nor preclude an intermediary server from sending a document directly to a user.

Applicant alleges "Moreover, amended claim 1 [,]" (page 13, lines 1-11). The examiner disagrees. Firstly, Stumm does teach away from the claimed invention because the claim language neither precludes an intermediary server from sending the document to the user nor specifies who is sending the document nor specifies a structure that precludes an intermediary server. Secondly, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the description at page 11 of the specification) are not recited in the rejected claim(s). Although the claims are

interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

4.   Newly submitted claim 24-31 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Inventions I (claims 1-12), II (claims 24-25) and III (claims 26-31) are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the broadest combination claim i.e. claim 1 does not require "a bandwidth database to monitor the use of bandwidth on one or more channels" found in the broadest subcombination claim 24 and does not require "determining an optimal time for file transfer at a recommended speed" found in the broadest subcombination claim 26. The subcombination has separate utility. The first subcombination has a separate utility such as a channel management system to monitor and reserve bandwidth to provide utmost efficiency of distribution and exchange of data. The second subcombination has a separate utility such as a system for providing distribution and exchange of data with guaranteed speed of transfer during an optimal time.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 24-31 are withdrawn from consideration

as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP §

821.03.

Claim Rejections - 35 USC § 102

4.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or
>
> on sale in this country, more than one year prior to the date of application for patent in the United States.

5.   Claims 1-2, 6, 8, are rejected under 35 U.S.C. 102(b) as anticipated by Stumm [U.S. Pat.

5,768,528].

As to claim 1, Stumm discloses an apparatus for delivering an electronic document,

comprising of:

A. a sending device which functions to send an electronic document [a server system (Fig. 1,

item 201 sends information relates to news articles (documents) (col. 4, lines 2-4)];

B. at least one receiving device, which functions to receive the electronic document directly

from the sending device [subscribers (fig. 1, items 26-1, ... 26-n)]; and

C. a network between the sending device (Fig.1 , item 22), and the at least one receiving device,

the network functioning to allow the sending device to send a notification to the receiving

device, and wherein the receiving device sends a notification to the sending device whereby the

sending device forwards the electronic document directly to the receiving device [server 20

sends a schedule of events file to the subscribes, so the subscribers would be able to

communicate with the server at predetermined schedules (notification from sending device

(server) to receiving device (subscriber) (Abstract, lines 5-8, col. 9, lines 48-51), the subscriber's

software (receiver) launches a request for information (notification sent to server) at a

predetermined time according to the schedule to download the file data (Abstract, lines 8-14, col.

3, lines 51-57)].

As to claim 2, Stumm further discloses, wherein the sending device automatically records

all notifications sent to and received from the receiving device, and whereby the receiving device

automatically records all notifications sent to and received from the sending device [server

(sending device) is coupled to a database 16 that stores various data intended for use by

subscribers, schedules, for subscribers, updates (all notifications sent to or received from

receiving device) (col. 3, lines 32-35, col. 4, lines 23-38), subscriber (receiving device) has a

scheduler and a log file to store all communications and events (notification) between the server

and the subscriber (col. 2, lines 21-31, col. 5, lines 46-53, Fig. 3, item 62).

As to claim 6, refer to claim 2 rejection for their common features, Stumm further

discloses a network (Fig. 1, item 22), that allows the sending device (server) to send a document

to the receiving device (subscriber) (col. 3, line 51-col. 4, line 4).

As to claim 8, Stumm further discloses wherein the receiving device is one of a

community of receiving devices [the subscriber computer (receiving device) is part of a local

network (one of community of receiving devices) (col. 9, lines 60-61)].

Claim Rejections - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

7.   Claims 3, 5, 10, 11, are rejected under 35 U.S.C. 103(a) as being unpatentable over

Stumm [U.S. Pat. 5,768,528] in view of Christie et al [U.S. Pat. 6,182, 117].

As to claim 3, Stumm further discloses, wherein the network functions to allow the

sending device to send a notification to a plurality of receiving devices, wherein each receiving

device sends a notification to the sending device, and whereby the sending device waits for a

notification, and whereby the sending device forwards the electronic document to the plurality of

receiving devices and whereby the sending device automatically records all notifications sent to

and received from the receiving device, and whereby the receiving device automatically records

all notifications sent to and received from the sending device [a server (fig. 1, item 20) sends a

schedule of events file to the subscribes (receiving devices), so the subscribes would be able to

communicate with the server (sender send a notification to a plurality of receiving devices)

(Abstract, lines 5-8, col. 9, lines 48-51), each subscribe software (each receiver) launches a

request for information (notification sent to the server) at a predetermined time, according to the

schedule to download the file data (document) (Abstract, lines 8-14, col. 3, lines 51-57). The

sending device (server) is coupled to a database 16 that stores various data intended for user by

subscriber, schedules for subscribers, updates (all notifications sent to or received from the

receiving device (subscriber) (col. 3, lines 32-35, col. 4, lines 23-38). Subscriber (receiving

device) has a scheduler and a log file to store all communications & events (notification sent by

or received from the sender (server) (col. 2, lines 21-31 & col. 5, lines 46-53, fig. 3, item 62)].

Stumm does not disclose that the notification to the plurality of receiving devices in a

single multicast transmission.

Christie discloses an e-mail system that provides the ability to re assemble objects at a

replication site such that an object and all of its dependencies exist prior to the objects uses at the

site. Messages referred to as "ACK" message (notification messages) are used to communicate a

site's state and provide other control information (col. 2, lines 41-48). A process known as

multicasting can be used to send one replication message (notification messages) to all of the

necessary sites (i.e single multicast transmission) (col. 5, lines 29-32).

It would have been obvious to one of ordinary skill in the art at the time the invention

was made to use Christie's teachings to modify Stumm's apparatus by sending the notification to

the plurality of receiving sites in a single multicast transmission in order to communicate the

sender site's state and other control information to the receives which does not require additional

work to communicate with each receiver separately.

As to claim 5, refer to claim 3 rejection for their common features. Both Christie and

Stumm disclose at least one receiver (col. 3, line 51-col. 4, line 4).

As to claim 10, Stumm does not disclose that the receiving device is not a member of a

sending devices community.

Christie discloses an e-mail system that provides the ability to re assemble objects at a

replication site such that an object and all of its dependencies exist prior to the objects uses at the

site. Messages referred to as "ACK" message (notification messages) are used to communicate a

sit's state and provide other control information (col. 2, lines 41-48). A process known as

multicasting can be used to send one replication message (notification messages) to all of the

necessary sites (i.e single multicast transmission) (col. 5, lines 29-32). Christie's invention can

be used with mixed e-mail systems (col. 9, lines 37-43), a work station (receiver) 322 which is

not a member of the forum (community) and "AKC" messages are sent to gain membership to forum (col. 11, lines 52-62).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Christie's teachings to modify Stumm's apparatus by enabling non member receiving devices to gain member ship to the forum in order to enhance the ability to deliver e-mail service and access to documents among the members of a workgroup (community) and other remotely located workgroup on another network.

As to claim 11, Christie further discloses that sending device sends a notification to the receiving device comprising a direct reference to become a member of a sending device community, wherein the receiving device executes the direct reference and becomes a member of the sending device community, whereby the sending device automatically records all notifications sent to and received from the receiving device, and the receiving device automatically records all notifications sent to and received from the sending device (col. 9, lines 37-43, col. 11, lines 52-62).

8.   Claims 4, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stumm [U.S. Pat. 5,768,528] in view of Christie et al [U.S. Pat. 6,182, 117] and further in view of Ramanathan et al. [US. Pat. No. 5,913, 041].

As to claim 4, Stumm does not disclose that the sending device waits for a time-out of collection of the notifications and forwards the electronic document to the plurality of the receiving devices in a single multicast transmission.

Christie discloses an e-mail system that provides the ability to re assemble objects at a replication site such that an object and all of its dependencies exist prior to the objects uses at the

site. Messages referred to as "ACK" message (notification messages) are used to communicate a

sit's state and provide other control information (col. 2, lines 41-48). A process known as

multicasting can be used to send one replication message (notification messages) to all of the

necessary sites (i.e single multicast transmission) (col. 5, lines 29-32).

It would have been obvious to one of ordinary skill in the art at the time the invention

was made to use Christie's teachings to modify Stumm's apparatus by sending the notification to

the plurality of receiving sites in a single multicast transmission in order to communicate the

sender site's state and other control information to the receives which does not require additional

work to communicate with each receiver separately.

Christie does not disclose the sending device waits for a time-out of collection of the

notifications. However, sending data from a server during a time- out is well known in the art as

disclosed by Ramanathan. Ramanathan discloses a method of managing a data access system

where transfer of data between a content server and a remote site of user includes the data

transfer size and the transfer times (duration) (col. 3, lines 12-24). The server transfer data during

a time-out period (col. 9, lines 9-12).

It would have been obvious to one of ordinary skill in the art at the time the invention

was made to use Ramanathan's teachings to modify the combined apparatus of Stumm and

Christie by sending the notifications of transfer time (duration) to the user during a time-out in

order to more efficiently allocate the existing resources based upon the calculation of data

throughput to the user according to the transfer sizes and times.

As to claim 9, refer to claim 3 rejection for their common features. Neither Christie nor Stumm disclose that the notified time is the time when network capacity is fee to the receiving device.

Ramanathan discloses a method of managing a data access system where transfer of data between a content server and a remote site of user includes the data transfer size and the transfer times (duration) (col. 3, lines 12-24). The server transfer data during a time-out period (col. 9, lines 9-12). Data transfer rates are correlated with one or more factors of interest, the factor of interest may be a time related or date related in order to determine whether the resources (throughput) of the system are being taxed at particular times (col. 7, lines 31-44).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Ramanathan's teachings to modify the combined apparatus of Stumm and Christie by notifying the receiver about the times that (throughput) of the network are substantially free to send the data to the receiver in order to more efficiently allocate the existing resources (throughput) based upon the particular days of the week without the system being taxed.

9.   Claims 7, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stumm [U.S. Pat. 5,768,528] in view of Ramanathan et al. [US. Pat. No. 5,913, 041].

As to claim 7, Stumm further discloses that the network functions to allow the receiving device to send a notification searching for the sending device, wherein the sending device replies with a notification of time [subscriber 26 (receiver) sends a request (notification) for information from a server 20 (sending device), the server sends a schedule of events files, so the subscriber would be able to communicate with the server according to a predetermined schedule

(notification of time) (Abstract, lines 5-8, col. 9, lines 48-51)], the receiving device then requests

at the notified time directly to the sending device, whereby the sending device will forward the

electronic document to the receiving device, and whereby the sending device automatically

records all notifications sent to and received from the receiving device, and the receiving device

automatically records all notifications sent to and received from the sending device [the

subscriber sends a request for the information at the predetermined time according to the

schedule received from server (Abstract, lines 8-14, col. 3, lines 51-57) the server stores

schedules for subscribers updates (all notifications sent and received from the receiving device)

in a database 16 (col. 13, lines 32-35, col. 4, lines 23-38). Subscriber (receiving device) has a log

file to store all communications and events (notifications sent and received from the sending

device) (col. 2, lines 21-31 & col. 5, lines 46-53, Fig. 3, item 62).

Stumm does not disclose that the notified time is the time when network capacity is

substantially free to the receiving device.

Ramanathan discloses a method of managing a data access system where transfer of data

between a content server and a remote site of user includes the data transfer size and the transfer

times (duration) (col. 3, lines 12-24). The server transfer data during a time-out period (col. 9,

lines 9-12). Data transfer rates are correlated with one or more factors of interest, the factor of

interest may be a time related or date related in order to determine whether the resources

(throughput) of the system are being taxed at particular times (col. 7, lines 31-44).

It would have been obvious to one of ordinary skill in the art at the time the invention

was made to use Ramanathan's teachings to modify Stumm's apparatus by notifying the receiver

about the times that (throughput) of the network are substantially free to send the data to the

receiver in order to more efficiently allocate the existing resources (throughput) based upon the

particular days of the week without the system being taxed.

As to claim 12, Stumm discloses an apparatus for automatic management and allocation

of network traffic based on requests to use network capacity comprising of:

A. a sending device, which functions to send an electronic document [a server system (Fig. 1,

item 20) sends information relates to news articles (ducuments) (col. 4, lines 2-4)];

B. a bandwidth database which functions to store reservations for sending the electronic

document [database 16 stores schedules for sending the documents (col. 2, lines 21-31, & col. 5,

lines 46-53, Fig.3, item 62)];

D. at least one receiving device, which functions to receive the electronic document directly from

sending device [subscribers (Fig. 1, items 26-1,...26-n)].

E. a network between the sending device and receiving devices, wherein the sending device

automatically records all notifications sent to and received from the receiving device, and

whereby the receiving device automatically records all notifications sent to and received from

said sending device [server 20 sends a schedule of events file to the subscribers, so subscribers

would be able to communicate with the server at predetermined schedules (col. 9, lines 48-51),

server (sending device) is coupled to database 16 that stores schedules for subscribers, updates

(all notifications sent to or received from receiving device) (col. 3, lines 32-35, col. 4, lines 23-

38). Subscriber (receiving device) has a scheduler and log file to store all communications and

events between the server and the subscriber (col. 2, lines 21-31 & col. 5, lines 46-53, fig. 3, item

62)].

Stumm does not disclose,

C. a channel manager, which comprises a plurality of algorithms which function to calculate a time to send the electronic document and wherein transactions to send document transfers are managed through a channel manager and a bandwidth database. Ramanathan discloses a method of managing a data access system where transfer of data between a content server and a remote site of user includes the data transfer size and the transfer times (duration) (col. 3, lines 12-24). The system computes transfer time based on the data transfer size and throughput (bandwidth) calculations are correlated with the time of day and stored in server 22, 20, 18 (col. 7, lines 7-44 & fig. 2].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Ramanathan's teachings to modify Stumm's apparatus by calculating times to transfer data and correlate it with network (channel) throughput (bandwidth) in order to more efficiently allocate the existing resources (throughput) based on the particular times of the day without the system being taxed.

10.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of
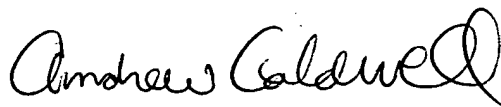
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hieu Le whose telephone number is (571) 272-3897. The examiner can normally be reached on Monday to Friday from 7:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Caldwell Andrew, can be reached on (571) 272-3868. The fax phone number for this Group is (571)-273-3897.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 273-8300.

Hieu Le

ANDREW CALDWELL
SUPERVISORY PATENT EXAMINER